AMENDMENTS TO THE DRAWINGS

A proposed amendment to Fig.8 is enclosed to address the objections raised by the Examiner. The amended drawing addresses feature number 117 and shows a thickness for the adherent layer 125. The amended drawing is fully supported by the specification and does not introduce any new matter into the application.

REMARKS

Reconsideration of the present application is respectfully requested. Amendments to the specification and Fig. 8 have been made to address the matters raised by the Examiner. A replacement sheet for Fig. 8 is included herewith for the Examiner's review. Withdrawal of the objections to the specification and the drawings are respectfully requested.

Claims 1, 4-6, 8, 20 have been amended and claims 3, 7, 9-19 have been cancelled. Further, new claims 26-32 have been introduced.

Claims 1 – 4, 8 -10, 14 – 16, 19 and 20 are rejected under the judicially created doctrine of obviousness-type double patenting as being unpatentable over the claim of U.S. Patent No. D465,022 to Stansbury in view of U. S. Patent 4,842,095 to Rozek. Further, claims 5-7, 11-13, 17 and 18 are rejected under the judicially created doctrine of obviousness-type double patenting as being unpatentable over the claim of U.S. Patent No. D465,022 to Stansbury in view of U. S. Patent 4,842,095 to Rozek and further in view of U. S. Patent No. 4,721,275 to Benton.

As set forth in the Office Action a non-statutory double patenting rejection is based on a judicially created doctrine grounded in public policy so as to prevent the unjustified or improper time wise extension of the "right to exclude" granted by a patent and to prevent possible harassment by multiple assignees. Further, the Office Action provides that "[a] timely filed terminal disclaimer in compliance with 37 CFR 1.321 (c) may be used to overcome an actual or provisional rejection based on a nonstatutory double patenting ground provided the conflicting application or patent is shown to be commonly owned with the application." Before requiring the filing of a terminal

disclaimer in the instant application the Examiner is respectfully requested to consider that the law is quite clear that there is a heavy burden of one seeking to show non-statutory double patenting in the context of utility versus design applications. Carmen Industries, Inc. v. Wahl et al., 220 USPQ 481, 487 (CAFC 1983). Further, the court provided that "[d]oubling patenting is rare in the context of utility versus design patents." Id.

A non-statutory double patenting rejection is only proper if the prior patent claims are not patentability distinct from the application claims, and if the application claims are not patentability distinct from the prior patent claims. In re Goodman, 29 USPQ2d 2010, 2016 (CAFC 1993). The analysis is therefore predicated upon a two way test. Further, the Court of Appeals opinion in In re Goodman provides further guidance regarding the requirement for a terminal disclaimer. The opinion provides in the pertinent part:

> [i]n *Braat*, the later-filed application containing claims to a patentable combination that included a subcombination which was the subject of an independent prior application. Although the later-filed application became a patent first, this court did not reduce the term of the earlier-filed, but later issued, patent. This court did not require a terminal disclaimer because Bratt's application was held up not by the applicant, but by "the rate of progress of the application through the PTO, over which the applicant does not have complete control."

In re Goodman, 29 USPQ2d 2010, 2016 (CAFC 1993).

The present application is a continuation application of Application No. 10/699,829 filed on September 24, 2003. Application No. 10/699,829 is a continuation application of Application No. 09/941,524 (herein after FIRST APPLICATION) filed on August 29, 2001. During the prosecution of the FIRST APPLICATION a First Office Action rejecting all of the claims issued on June 24, 2002, a Response was filed December 24, 2003, and a Final Office Action issued on April 24, 2003. In contrast U.S.

Patent No. D465,022 to Stansbury was filed on October 9, 2001 and issued on October 29, 2002. The '022 design Patent was filed after the FIRST APPLICATION and issued approximately four months after the issuance of the First Office Action on the FIRST APPLICATION. It is believed very fair and reasonable to conclude that the Applicant did not hold up the progress of the FIRST APPLICATION through the Patent Office. Therefore, the present facts support the position that a terminal disclaimer should not be required to remove a non-statutory double patenting rejection for the FIRST APPLICATION and the present application. Withdrawal of the non-statutory double patenting rejections founded upon U.S. Patent No. D465,022 to Stansbury is respectfully requested.

Claims 1-15 and 17-20 were rejected under 35 U.S.C. § 103 as being unpatentable over United States Patent No. 4,721,275 to Benton in view of United States Patent No. 4,842,095 to Rozek. The Manual of Patent Examination Procedure provides that "[t]he examiner bears the initial burden of factually supporting any *prima facie* conclusion of obviousness." *See*, MPEP § 2142. "To establish a *prima facie* case of obviousness . . . . the prior art reference (or references where combined) must teach or suggest all the claim limitations." *See, Id*

In each of the § 103 rejections Benton '275 is utilized as the primary reference in rejecting the claims. Upon review of the '275 reference it is noted that the text and drawings, teach and suggest a steady leveling device 10 as set forth in figures 1-4 and a second steady leveling device 10a as set forth in figure 5. The steady leveling device 10 includes a point 32 that "can penetrate through carpet, underlayment and dig into floor underneath (not shown) to stabilize the base 26 of the furniture 12." Col. 2, l 3-6.

The point 32 is clearly designed to prevent movement of the furniture 12 relative to the floor. A fair reading of the reference is that at least the text and drawings associated with figures 1-4 teach and suggest a structure that is intended not to be slidable across the floor.

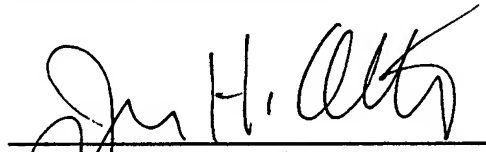
With reference to Fig. 5 of the '275 reference, there is illustrated a cross sectional view of the steady leveling device 10a. The steady leveling device 10a includes a horizontal flange 18a of l-shaped bracket 14a. A mounting screw 54 passes through the horizontal flange 18a and secures the L-shaped bracket 14a to the horizontal surface 46 of the base 26 of the furniture 12. The steady leveling device 10a includes a rack member 64 and thin screw 72 that are manipulated to drive the mounting screw 54 into the base 26 of the furniture 12. More specifically, the text of the '275 reference describes that "[w]hen the slotted head 74 is turned the rack member 64 will travel horizontally to turn the mounting screw 54 to travel upward to secure the horizontal flange 18a to horizontal surface 46 of the base 26 of the furniture 12." Col. 2, l. 42-46. The embodiment 10a is specifically directed to a system to drive a fastener 54 into the furniture. In contrast the inventions of independent claims 1 and 26 couple the mount to the furnace without a mechanical fastener.

For the sake of clarity the absence of a mechanical fastener refers to structure such as a screw, bolt, pin and/or rivet and not non-mechanical fasteners such as glue, adhesive and/or mastic. Withdrawal of the § 103 rejection of the claims is respectfully requested for at least the above reasons.

Dependent claims 4-6, 8, 20 and 27-32 are at least allowable as they depend from an independent claim that is believed allowable.

The Examiner is respectfully requested to further examine the application and issue a timely Notice of Allowability.

Respectfully submitted,



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